

SECRECY AND POWER IN SOUTH AFRICA

Dale T. McKinley

Published as: 'Secrecy and Power in South Africa' in New South African Review 4: A Fragile Democracy - Twenty Years On, edited by Gilbert M Khadiagala, Prishani Naidoo, Devan Pillay and Roger Southall (Johannesburg: Wits University Press, 2014): 150-166

'The best weapon of a dictatorship is secrecy, but the best weapon of a democracy should be the weapon of openness'

Niels Bohr (1885-1962: Danish physicist, Nobel Laureate)

Secrecy has always been one of the most dangerous enemies of democracy. Any meaningful democracy, by its very nature, demands openness, transparency and accountability - these are the currencies of democratic freedom. On the other hand secrecy, as human history has so often shown, is the currency of authoritarianism (whatever the ideological variety), of social, economic and political control by those for whom the securing and maintenance of power is the ultimate goal.

Yet, despite these foundational understandings and historical experiences¹, all indications point to the reality that in our contemporary South Africa (and indeed our world) secrecy is back in fashion with a vengeance. While secrecy's 'new' look might appear different than those of the past – after all, power has regularly had to change its appearance precisely because of democratic struggles - the essence of what its mask is trying to hide has changed little.

As the WikiLeaks saga has so convincingly shown, there are few things that those in and/or with, power, whether in the public or private sectors, fear more than anything is for ordinary people to have access to the truth: the truth about how they spend (and earn) money; the truth about what they say and do behind closed doors and what they say and do in public; the truth about how decisions are made and who influences, and benefits from, those decisions; the truth about what we all simply don't, but should, know.

Our early 21st century conundrum is that the rapid advances in information technology, networking and dissemination have catalysed an equally rapid growth of this fear-induced, suffocating secrecy industry. While there is now more information available than ever before

(leaving aside the issue of the dominant character and content of that information as well as huge disparities in the ability to access it), there are also more secrets than ever before and thus the intensified desire by those in/with power, to hide them.

To take but one contemporary international example, according to a two-year long *Washington Post* investigation² the number of new (government-induced) secrets in the United States rose 75% between 1996 and 2009 with the number of documents using those secrets exploding from 5,6 million to 54,6 million during the same period. Similar, even if quantitatively less, indicators of the burgeoning secrecy industry are visible across the globe. Just ask the ordinary Zimbabwean, Chinese or British citizen. South Africa is no exception.

Embedded in History

Although the symbiotic relationship between secrecy and power was at the core of the entire edifice of colonialism and imperialism across the global south, the implementation of formal apartheid in South Africa took this relationship to a new level. After narrowly securing victory in South Africa's 1948 all-white elections Prime Minister Dr. Daniel Malan and his Afrikaner-dominated National Party quickly set about the task of instituting a range of laws and decrees that would not only deepen existing legalised racism but lay the foundation for complete political and administrative control of the state. In turn, this ideologically saturated securitisation of the state was then used to control all social, economic and political relations across South African society and to suppress any resistance from the oppressed black majority.³

The passage of the Suppression of Communism Act of 1950 gave the apartheid state the legal basis to ban all organisations, protests and publications that were deemed 'communist', alongside banning, detaining and/or restricting those seeking any 'political, industrial, social or economic change' (Bunting, 1969: 199). This was quickly followed by: the Criminal Laws Amendment Act of 1953 (outlawing all protest/gatherings not approved by the state); the Public Safety Act of 1953 (allowing states of emergency for up to twelve months as well as associated detentions without trial); and, the Riotous Assemblies Act of 1956 (criminalising 'intimidation' related to strikes/stayaways/pickets, the joining of a non-state approved union and incitement to public violence).

The 1960s saw three more pieces of related legislation being passed to complete the circle: the Internal Security Act of 1963 (allowing for various types of preventative detention and interrogation of political-social activists); the Civil Defence Act of 1966 (providing for the seizure of both people and property during states of emergency or threats of emergency); and,

the Terrorism Act of 1967. This legislation allowed for indefinite detention without trial of ‘suspected terrorists or persons in possession of information about terroristic activities’ (Ibid: 236). Later in 1982, the omnibus Internal Security Act was passed, effectively replacing all previous ‘security’ legislation and providing even harsher regimes for the criminalisation and banning of individuals, organisations, publications and gatherings as well as for detention without trial. The axle on which the use of such concentrated political and socio-economic power turned was institutionalised secrecy, as evinced in the Protection of Information Bill of 1982.

Such state-centred secrecy was, not surprisingly, mirrored in the thinking and practice of the (white dominated) corporate sector, whose socio-political and economic interests dovetailed nicely with the main demands and needs of apartheid’s racial capitalism. However, one crucial aspect of apartheid’s heart of secrecy and power that most often goes largely unrecognised was its impact – both individual and organisational – on the main forces of liberation. The closing down of any meaningful space for democratic involvement by the black majority alongside the banning of liberation organisations, saw those forces embracing armed struggle and moving either into exile or an internal underground. On the armed struggle front, the tactical dominance of a sabotage campaign, by its very character, demanded highly secretive organisation and minimal involvement of the oppressed sectors of the population. As ex-South African Communist Party (SACP) and present African National Congress (ANC) stalwart, Ben Turok (1974: 360) noted perceptively:

Sabotage had the effect of isolating the organised movement from the mass... The sabotage campaign failed on the main count - it did not raise the level of action of the masses themselves ... they were left on the threshold, frustrated bystanders of a battle being waged on their behalf.

Over time, this was combined with an increasing centralisation of power centred on a small collection of exiled leadership⁴ and framed, in the case of the ANC and its exiled ally the SACP, by a generalised adherence to Soviet-style commandist politics and an overarching ideology and rhetoric that did not distinguish between the liberation movement and the people. As Suttner (2006 and 2008: 119) points out, the cumulative result was the generalised adoption of a ‘warrior culture, the militarist tradition’ which ‘entailed not only heroic acts but also many cases of abuse of power’, leading to the emergence of a liberation movement as a prototype of a state within a state, in which it sees itself as the only legitimate source of power.⁵

In turn, the growth and variety of grassroots organisational forms that emerged during the internal resistance to apartheid-capitalism during the 1980s, was accompanied by the ever-increasing influence of the decidedly bureaucratic, centralised and hierarchical organisational form of the exiled ANC and its allies (mainly grouped together in the United Democratic Front – Udf). While those forces associated with the Anc (both internally and externally) gained a dominant organisational and symbolic position by the late 1980s, the actual liberation struggle on the ground was replete with divergent, contradictory and often overtly hostile positions, locations, organisational and ideological traditions.

Indeed, by the late 1980s the Anc's 'calls for unity increasingly referred only to those who accepted the leadership of the Udf and its exiled Anc allies' (Marx, 1992: 171). While there certainly was a broad-based unity around getting rid of the apartheid system, there was also a marked intolerance and fear of internal dissent and external opposition that developed within the ranks of the Anc and its alliance partners, no more so than with the respective leadership. The supreme historical irony was that as the twilight of apartheid approached, the very forces of liberation poised to take political power had, to a significant degree imbibed much of the toxic concoction of secrecy and power so beloved by their own oppressors.

Same Wine, New Bottles?

The unbanning, return from exile and entrance into political negotiations of the Anc and other liberation organisations marked the opening up of a new terrain in the struggle for national liberation. However, it was not the terrain that many had envisioned. The Anc leadership, as the dominant liberation movement 'players', quickly adopted the position that there was no need for militant grassroots organisations and struggles since the institutional space, through the negotiations, would now act as the fulcrum of 'democratic' engagement (McKinley, 1997). What this logically required then, was an enforced unity in the name of 'the people', wherein such organisations were no longer needed now that the Anc and its allies had effectively ended formal apartheid. In turn, this was framed by an approach to 'nation-building' that demanded (of 'the people') political obedience to both the 'new' state – which was just around the corner - and the party that would soon control it.

The most immediate result of the political triumph over apartheid as evinced through the April 1994 elections was, as Salim Vally (2003: 67) has argued, a continuity of 'the dominant interests that determine the strategic thrust of the South African state ... [including] ownership of the commanding heights of the economy [and] the repressive apparatus of the state ... 'Crucially then, the mind-sets and practices that structured apartheid responses to

dissent and conflict found a generally warm embrace amongst the Anc leadership and, as we shall see, especially within the new state's security and intelligence apparatus. Such continuities were, however, over-determined by the particular position that was adopted by the state and ruling Anc party in relation to questions of economic policy as evinced through the adoption of the neo-liberal Growth, Employment and Redistribution (GEAR) policy. Indeed, the (early) transitional genesis of the Anc state's approach to (democratic) power and space is to be found in its heavy-handed reactions to, and effective marginalisation of, widespread dissent over GEAR.

Besides the Anc leadership's declaration that GEAR was 'non-negotiable'⁶, the central political tenet of that response was provided by senior Anc and state official, Joel Netshitenzhe (1996) who argued that, '... when pressure from below is exerted it should aim at complimenting the work of those who are exerting pressure against the old order from above'. In the context of the historical 'entry-points' as analysed above, this was simply another way of saying that the Anc and the state it now controlled viewed any political and/or socio-economic struggle and dissent against its own practices and policies (i.e. the exercise of power) as being unacceptable and even illegitimate. The implicit assumption was, and remains, clear; that the post-1994 state and the people that put it in power are one and the same and that going outside of the organisational and institutional boundaries of democratic engagement set by the ruling party and the state itself should be treated as an act of political heresy and, if necessary, a betrayal of the liberation struggle itself.

In practice, this is more or less what happened. As opposition from both within and outside of the Anc, its alliance partners and the state intensified a climate of hostility towards any radical critique of and active opposition to the Anc- and by association state - policy took hold. Labels such as 'ultra-left', 'unpatriotic' and 'counter-revolutionary' were increasingly used to label such critics and some were expelled from the Anc, Congress of South African Trade Unions (Cosatu) and the SACP.⁷ Then-President Thabo Mbeki declared, that 'the people know that ... historically, those who opposed and worked to destroy the ANC, and tried to mobilise the workers to act against our movement, were the same people who sought to entrench and perpetuate their oppression' (Mbeki, 2002).

Unsurprisingly, the practical impacts of GEAR and the gradual foreclosure of any real dialogue between the state and poor communities in relation to issues of economic import catalysed a new wave of resistance. As a result, engagements between the two began to take on an increasingly conflictual character, mediated by the criminal justice system in the context of post-1994 security and related legislation (McKinley and Veriava, 2005: 45-53).

In respect of such post-1994 legislation, although the South African Parliament passed the Safety Matters Rationalisation Act of 1996 which repealed a total of thirty four apartheid-era laws dealing with security legislation, several pieces of legislation from the apartheid days were maintained (and remain as law today). These include: the ‘Riotous Assemblies Act of 1956’ which, amongst other things, gives the President the power to take ‘special precautions to maintain public order’ and makes ‘incitement to public violence’ a crime; the National Key Points Act of 1980 (NKPA) which, amongst other things, makes it a crime punishable up to twenty years in prison for ‘disrupting’ the operations of secretly designated key points such as airports, military bases, government buildings, water storage and distribution facilities and oil refineries; the Protection of Information Act of 1982 (PIA) whose approach to the protection and dissemination of information is informed by the demands of an authoritarian and secretive apartheid state. and, the ‘Regulation of Gatherings Act of 1993’ (RGA) that determines how, where and when individuals and groups can gather as well as defines the shape, size and location of protests.

Besides these laws however, the Cabinet unilaterally implemented the Minimum Information Security Standards of 1996 (MISS) which, in the name of ensuring ‘that the national interest of the Republic are protected’, set down information security standards for all government departments/institutions based on four categories of classification for handling ‘sensitive information’ (restricted, confidential, secret and top secret). Besides going a long way to prevent the free-flow of government information, the MISS placed a thick veil of secrecy over whatever was left of apartheid-era state information. Even though the much-celebrated Promotion of Access to Information Act of 2000 (PAIA) was subsequently passed⁸, its immediate (and longer-term) effectiveness and impact was seriously compromised by a huge lack of public awareness, education and human resources within the state to implement it, the poor state of public records management and an alarming absence of accountability of those entrusted with ensuring its implementation (McKinley, 2003).

Further, the state introduced an ‘Anti-Terrorism Bill’ to Parliament in 2003, whose name was later disingenuously changed to the ‘Protection of Constitutional Democracy against Terrorist and Related Activities Act’ when it was passed in 2004 after intense public debate and opposition. Like its apartheid predecessor (the ‘Internal Security Act’ of 1982 some of which remained in effect from 1994 until the passage of the new Act) terrorism includes any act designed to ‘intimidate, or to induce or cause feelings of insecurity within, the public’. Critically for social movements and local community organisations whose protest activities have most often revolved around a lack of basic needs and services, the Act makes

‘interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility-system, whether public or private’ a terrorist act (Republic of South Africa, 2004).

Before the first decade of South Africa’s democracy had drawn to a close the Anc and the state it was increasingly running with a velvet-lined clenched fist, had ‘succeeded’ in: closing down many institutional avenues of democratic participation and redress; actively utilising repressive apartheid-era legislation and the coercive forces of the state to intimidate and harass activists and their organisations, crack down on popular dissent as well as prevent open access to state information, both past and present; and, invoking an exclusionary and accusatory political discourse wrapped in one-sided understandings of power. Such ‘successes’ were much too close a match to that displayed by the apartheid regime. Even if differentially located and experienced they revealed ‘inherited’ states of fear and loathing, reflecting both individual and organisational-institutional insecurities about power and place, about acceptance and legitimacy; the perfect incubator for secrecy.

Old Habits Die Hard

When then-President Mbeki (with Nelson Mandela and half of the government’s Cabinet in tow) joyously celebrated the awarding of the *Fédération Internationale de Football Association* (FIFA), 2010 Soccer World Cup to South Africa in 2003 not a single ‘ordinary’ South African had any idea what their elected government had agreed to in order to get the ‘prize’. Not that this bothered the Anc politicians, given their hyper-secretive conduct in concluding a wholly unnecessary late 1990s multi-billion Rand arms deal on ‘behalf’ of the South African citizenry. Indeed, despite overwhelming evidence of massive corruption involving senior Anc and government politicians/ officials - a result of whistleblowing and some courageous investigative research and journalism⁹ - to this day, there remains an ongoing battle being fought out in the legal/court system to try and force the government to reveal information about the arms deal.

So successful was the wall of secrecy thrown up around the Soccer World Cup deal between the government and FIFA (protected by an in-built confidentiality clause), that it took another seven years - after the actual tournament had been completed - for the South African public to find out what their ‘democratic’ representatives had agreed to, in their name. The ‘guarantees’ in the agreement (SA 2010 FIFA World Cup, 2010) included: providing FIFA with ‘the support of officers of relevant authorities, such as police and customs, to assist in the protection of the marketing and broadcast rights’; ensuring ‘that there

are no legal restrictions or prohibitions on the sale or distribution of commercial affiliates products'; indemnifying 'FIFA and defend and hold it harmless against all proceedings, claims and related costs which may be incurred or suffered by or threatened by others against FIFA'; providing, 'at no cost to the users, all telecommunications infrastructure'; 'not [to] impose any kind of taxes, duties or other levies on FIFA, FIFA's subsidiaries, the FIFA delegation and the host broadcaster'; 'unrestricted import and export of all foreign currencies to and from the country as well as the exchange of these currencies into US dollars, Euros or Swiss Francs'; and, 'to enact laws to ensure that hotel prices for the FIFA delegation [and] representatives of FIFA's commercial affiliates ... shall be frozen as of 1 January 2010 ... and that hotel prices for the FIFA delegation are 20% less than the frozen rate ... with no minimum stay'.

Neither did anyone outside of the World Cup 'inner-circle' elite, comprising top politicians, South Africa's soccer hierarchy and leading corporate capitalists, know that the original estimates in 2003 for the entire cost, to the government (and thus all South Africans) for having the 'privilege' to host the event, amounted to around R2,3 billion. What they eventually discovered was that the final cost was a shade under R40 billion, a 1700 percent increase (*Business Report*, 2 July 2010). One of the main reasons for this outrageous over-expenditure was the government's acceptance of confidential 'host city agreements' and 'stadium agreements' in which 'many of the terms in the contracts had been framed in an undetermined fashion' (Parliamentary Monitoring Group, 2006). The ensuing levels of fraud and corruption surrounding everything from stadium construction to fan parks (not to mention the murders of whistleblowers and the intimidation of journalists) are only now beginning to come to the surface thanks to a web of secrecy having been thrown up by the various power elites involved, at local provincial and national levels (McKinley, 2011; Media24 Investigations, 2013; IOL News, 2013)

Nowhere was the local version of this web more intense than in the province of Mpumalanga, not only in respect of the local Mbombela stadium but also with that most sensitive of post-apartheid issues, land. Starting in 2003 a motley crew of corrupt officials/politicians, local white farmers, politically connected businessmen and greedy Trustees of a local Community Trust (the Ndwandwa Trust), went about hijacking the Ndwandwa Trust. They did so as a means to milk available land reform funds with impunity, exploit legitimate beneficiaries ruthlessly and launch a sustained campaign against the person and properties of local whistleblowers, Fred Daniel and Robert Nkosi who exposed and blew the lid off what, to-date, remains the biggest land scam in South African history. Despite damning evidence from three independent and government-backed forensic investigations

into the scam that confirmed a R50 million fraud, no one was, or has since, ever been convicted of any crime (McKinley, 2012a).

The by-now flourishing affair between secrecy and power began to show its face all over the place. Soon after the passage of the Promotion of Access to Information Act (PAIA), a law explicitly designed, in the words of then-Minister of Justice and Constitutional Development Penuell Maduna, 'to bring to an end the secrecy and silence that characterised decades of apartheid rule and administration' (South African Press Association, 25 January 2000), the government granted the National Intelligence Agency a five-year exemption. Not long thereafter, then-Reserve Bank Governor Tito Mboweni, after refusing to release two damning reports on Saambou Bank publicly stated that 'it would be in the best interests of the banking sector as a whole' for the Reserve Bank to have a PAIA exemption. In what can only be described as a classic case of perverse logic Mboweni, arguing in defence of blocking access to information about banking operations, stated that, 'people do not understand the detail of what's going on' (Loxton, 2003).

However, it was in the myriad back corridors of power within the ruling Anc where the affair was 'outed' on a much grander scale. As the early 2000's factional battles between the respective Mbeki and Zuma factions within the Anc (and its alliance partners) became ever-more intense, so too did the involvement of the state's intelligence services. Charges between the two factions flew thick and fast revolving largely around the involvement of senior Anc and government leaders in spying for the apartheid regime, corruptly benefitting from the arms deal and abusing the state security and intelligence services to dig up such dirt and spy on each other (Hefer Commission of Inquiry, 2004; *Mail & Guardian*, 2009; *Mail & Guardian*, 2013b). Even if there was clearly a huge gap between the protagonists stated embrace of the constitutional values and laws respecting the privacy, dignity and human rights of all South Africans, acknowledgement of the past abuse of security and intelligence services for political and oppressive ends and what was actually going on¹⁰, by 2006 things were bad enough for the then-Minister of Intelligence Ronnie Kasrils to appoint a Ministerial Review Commission on Intelligence (the Matthews Commission)¹¹.

The Commission's mandate was to review the operations of all intelligence entities (excepting crime and defence intelligence) with an aim, 'to strengthen mechanisms of control of the civilian intelligence structures in order to ensure full compliance and alignment with the Constitution, constitutional principles and the rule of law, and particularly to minimise the potential for illegal conduct and abuse of power'. Its main findings confirmed that indeed, the services had been politicised and thus, 'drawn into the realm of party politics, required it to

monitor and investigate legal political activity and, as a result, undermined political rights that are entrenched in the Constitution.’

It also found that accountability to the public was weak, a ‘consequence of excessive secrecy, which is inconsistent with the constitutional tenet that all spheres of government must be transparent and accountable.’ Importantly it confirmed that the mandate of the intelligence services was far too broad, which ‘can lead to ... focusing in an inappropriate manner on lawful political and social activities.’ The excessive mandate was largely attributable to an equally over-broad conception of national security wherein the services had come to see themselves as the main watchdog of society, almost separate and above the constitutional and democratic order. In this respect, the Commission noted that, ‘national security should thus not be conceived as separate from, and potentially in conflict with, human security and human rights. It encompasses the security of the country, its people, the state and the constitutional order.’

Many other problems were identified by the Commission: a lack of adequate over-sight and regulation in respect of counter-intelligence functions as well as the finances and budget of the services; that the Inspector General of Intelligence lacks independence and resources; that the National Communication Centre ‘appears to be engaged in signals monitoring that is unlawful and unconstitutional’ because it ‘fails to comply with the requirements of the Regulation of Interception of Communications and Provision of Communication-Related Information Act of 2002 (RICA), which prohibits the interception of communication without judicial authorisation’; and, that ‘some senior officials believe that it is legitimate to break the rules when dealing with serious security threats’. The conclusion of the Report, besides calling for a public review of the intelligence mandate and several specific measures to improve accountability, crucially argued that, ‘the right of access to information lies at the heart of democratic accountability and an open and free society. Secrecy should therefore be regarded as an exception ... the intelligence organisations have not shed sufficiently the apartheid-era security obsession with secrecy.’

However, just when there seemed to be the real possibility for a serious push for the democratisation of the intelligence services, and thus also for a range of opportunities to reign-in those who had increasingly become intoxicated with the power-secrecy potion, factional politics within the ruling Anc took centre stage once again. The triumphant Zuma faction¹², with Zuma himself having been given a ‘get-out-of-jail-free’ card by the timely intervention of some individuals within the very security-intelligence and prosecutorial agencies at the heart of the burgeoning secrecy industry, quickly put the Matthews

Commission Report in the closet and set about mixing-up its own, even more powerful, cocktail of secrecy and power.

Riding Roughshod: Zuma and the Securocrats

‘There is too much information in the hands of citizens’

NkenkeKekana – former Ancparliamentary communications portfolio committee chair, 2011

In many ways, South Africans should not be that surprised with what has happened – in respect of the secrecy and power equation - over the last few years under the ‘reign’ of a government and Ancof which Zuma is the President. Firstly, Zuma was very much central to the leadership of both since the beginning of the transition and thus, part and parcel of all major policy, organisational and overall political developments; while there have been degrees of change there has been a great deal more continuity. Secondly, Zuma cut and sharpened his political/organisational teeth as head of Anc Intelligence during the latter part of the exile years; as the previous section avers, old habits die hard.

One of the arenas of secrecy which Zuma and his lieutenants quickly made it clear they would not only continue to uphold but would expand, was political party funding. With the embers of the Polokwane ‘victory’ fire still hot, the Anc’s investment arm, Chancellor House, as 25% owner of Hitachi Power Africa, signed a hugely lucrative contract worth an estimated R3 billion, with Eskom as part of Eskom’s power station infrastructure project (Brümmer and Sole,2008). Not surprisingly, the Anc has flatly refused to divulge the contents of the contract or to answer questions about how the party is using the money.

Likewise; Zuma’s Anc has consistently refused to embrace transparency about the sources and amounts of private funding it receives or to act on unregulated private funding of all political parties. It is estimated that the amount of such private ‘donations’ to political parties (of which the Anc is by far the largest and also the incumbent, state power holder) during the 2009 elections was in the region of R550 million (Right2Know Campaign, 2013b). Further, unbeknownst to most all South Africans, almost R1 billion has been paid out by provincial governments to political parties (the lion’s share of which goes to the Anc) even

though it appears that the legal standing of such payments is unconstitutional (Phoshoko, Timse and Brümmer, 2013).

Much like the Mandela and Mbeki years, the Zuma government has maintained and in many cases expanded the Anc and the state's cosy relationship with the corporate sector. Predictably, this has seen an even greater wall of secrecy being thrown up, by both the Anc/state and the corporate sector, and often in conjunction, around (amongst others); public infrastructure tenders, environmental impact assessments, personal business relationships, workplace conditions, energy tariff deals, mining licenses, service contracts and road tolls. In one of the most outrageous examples, the activities of Aurora Empowerment Systems (with President Zuma's nephew, Khulubuse Zuma and his lawyer Michael Hulley being key shareholders) in stripping the assets and destroying the lives of thousands of workers at the Grootvlei and Orkney gold mines, has been actively covered up for years. A judicial inquiry where both testified about their roles was held behind closed doors (Smith, 2011) and to-date no one has been held responsible.

When civil society organisations and the media have attempted to access information related to the impact of industrial and mining activities on the environment, many government departments and private companies have flatly refused access and treated the hidden information as 'state secrets'. During 2011-2012 the Mineral Resources Department refused 97 per cent of over 100 PAIA requests for information on environmental health and protection, made by the Centre for Environmental Rights (CRE). The refusal rate by private companies was almost as high with CRE's Director Melissa Fourie noting that they, 'encountered reluctance, resistance and suspicion from both public and private bodies ... we were frequently interrogated about our and our clients' motives, use and need for the information' (Carnie, 2012).

Similarly, over the past two years there has been a consistent pattern of collusive blocking of information related to the proposed expansion of the Durban Port and new Dug-out Port that is crucial to the environmental and physical health of communities in the South Durban basin (South Durban Community Environmental Alliance, 2012). The same kind of secrecy by default behaviour has also been applied to the state's proposed R1 trillion nuclear build programme (which makes the earlier arms deal seem like small change), with Greenpeace Africa's PAIA requests to the Department of Energy for its Integrated Nuclear Infrastructure Review (INIR) which contains information on process, environmental assessment and financing, being either refused or simply ignored (Greenpeace Africa, 2012).

Even information related to government-initiated commissions of inquiry, the impetus for which have mostly come from public pressure and media exposure, has been actively kept in the secrecy closet by Zuma and his securocrats (Freedom of Expression Institute, 2010, *Mail & Guardian*, 2013). To give the most recent example of the extent of such generalised secrecy, the South African History Archive (SAHA) administered one hundred and fifty nine PAIA requests for information held by various public and private bodies during 2012; of these, one hundred and two (64 per cent) were refused or received no answer (Right2Know Campaign, 2013b).

Two of the most publicly contentious issues where the Anc, state and private sector have jointly waged intense battles to prevent public access to information have been over energy pricing and e-tolling. In the case of energy (electricity) pricing, it took almost four years of PAIA requests, protests, and expensive court proceedings to finally force Eskom, along with corporate behemoth BHP Billiton (in March 2013), to reveal a secretive contract that gives preferential prices far below those charged to ordinary South Africans (Business Report, 2013). Linked to this is the Department of Energy's promulgation in 2012 of two draft bills, the National Energy Regulator Amendment Bill and the Electricity Regulation Second Amendment Bill. Combined, these will effectively transfer the regulatory power of the present statutory body, the National Energy Regulator of South Africa (NERSA) to the Minister of Energy. In turn, this will practically mean that the one space where the public can access crucial energy information as well as actively participate in decision-making processes will effectively be taken away (Earthlife Africa Jhb, 2012)

On the e-tolling front, national and provincial government have repeatedly stone-walled widespread public calls to come clean on the decision-making process leading to, and content of, a bevy of contracts signed with the Electronic Toll Collection (ETC) consortium that will run the e-toll system in Gauteng and which will see road-users paying steep tariffs for the privilege of travelling on roads built with public funds (*The Times*, 2012). Despite public protests largely led by Cosatu and a lengthy legal battle engaged by the Opposition to Urban Tolling Alliance (Outa), along with revelations that Anc-linked businesses have and will continue to benefit handsomely (Rasool, 2012), the toll system is now on the verge of being implemented after President Zuma signed the 'Transport Laws and Related Matters Amendment Bill; (otherwise known as the E-Toll Bill) into law in late September 2013.

This conscious, politically and materially driven closing down of South African's constitutionally-enshrined right of access to information under the Zuma-led Anc/state (with the active encouragement and collusion of corporate capital) is one side of a three-pronged

secrecy-power matrix. While that matrix has been in operation from the start of the South Africa transition, the ascension to power of the Zuma faction since 2007/2008, has taken it to another level. The second side is the militarisation and centralisation of power within, the coercive forces of the state alongside the massive and largely de-regulated growth of the private security industry. As Karl Marx so clearly understood; the sustenance of societal consent under capitalism demands enforcement through the combined coercive power of the state and the capitalist class.

In the case of the latter, the dominant vehicle in contemporary South Africa has become the private security industry which has doubled in size over the last five years and now has more than two-and-a-half times the number of personnel (many of whom are armed to the teeth) than the South African Police Services (De Waal, 2012). Despite this, the state has largely abandoned its oversight/regulation mandate, with the result that there is no available information on the number of firearms held nor deaths/violent incidents involving the industry (Jaynes, 2012). The result is a massive unregulated private 'army' spread out all over the country, largely protecting private interests (although in many cases, public infrastructure and services through outsourced state contracts) and doing more or less what it pleases without any meaningful consequences.

As far as the coercive forces of the state are concerned, Zuma's *umshini wami*-inspired militarisation of the police force has catalysed an even harsher crackdown on surging worker and community protests; protests that themselves are largely a direct response to a lack of basic services and/or the closing down of democratic space. Outright, and illegal, bans on marches, a shoot first, ask questions later approach (as at Marikana) and a huge upsurge in the number of people who have died either as a result of police action or being in police custody (with over eight hundred deaths in 2010/2011 alone) are now the order of the day (Duncan, 2010; Independent Police Investigative Directorate, 2010/2011). In the specific case of the Marikana massacre, there has been a particularly energetic effort by Zuma's secuocrats to bottle up relevant police and intelligence information that might actually force them to take responsibility (Kasrils, 2012). Such systematic use and abuse of the state's coercive forces is all the more damning when even the Minister of State Security himself openly admits that there are 'no discernable threats to our constitutional order' (Cwele, 2011).

The third side of the matrix is the law, both past and pending. As previously noted the RGA of 1993 has been kept on the books and under the Zuma state, has been (mis)used more than ever before to frustrate and prevent people's legitimate right to protest, and thus to bring

consistent popular pressure for transparency and accountability. But, that has clearly not satisfied the seemingly insatiable need of Zuma and his securocrats to hide behind their self-constructed walls as well as try and prevent the public finding out what they have been doing. What better way to (literally) buttress those walls of secrecy around the physical representations of state and private (capitalist) power than to dust off and actively employ, the NKPA of 1980.

This apartheid dinosaur gives the Minister of Police the power to declare any place a 'national key point' if it is considered vital to 'national security'. Once a site is declared, a range of strict anti-disclosure provisions which criminalise any person disclosing 'any information' in 'any manner whatsoever' about security measures of a national key point comes into effect as does the curtailment of the right of assembly in/near any key point (South African Police Service, 2007). No surprise then that Zuma and his securocrats have increased the number of national key points by over 50 per cent in the last five years, famously adding Zuma's private rural residence in Nkandla to prevent disclosing details around the expenditure of large sums of public monies, although they continue to refuse to publicly reveal the rapidly expanding list for 'national security' reasons (Right2Know Campaign, 2012b). There's more though.

Completely ignoring almost every warning and recommendation of the Matthews Commission Report, Zuma and his securocrats reintroduced the Protection of Information Bill in 2010. Since renamed the Protection of State Information Bill but popularly known as the 'Secrecy Bill', it is on the verge of being passed into law. This, despite spirited and widely supported opposition¹³ led by the Right2Know Campaign which was initially formed to fight the Bill; a fight that has seen the Bill go through 29 versions and in the process become the most debated piece of legislation in post-apartheid South Africa.

Even though some of the most draconian aspects have been excised, the Bill remains hugely problematic for a number of reasons: the definition of 'national security' remains open-ended and thus ripe for abuse in determining what information can be 'protected', particularly due to the inclusion of undefined 'state security matters' and 'economic, scientific and technological secrets'; it will give the Minister of State Security (and to lesser degrees, other state bodies like the police service) incredibly wide powers over classification procedures and overall management of state information; it will ensure that previously classified information, including from the apartheid era, enjoys protection; it criminalises (with extremely harsh sentences) simple possession and/or disclosure of classified information; and, there is no full public interest defence nor public domain defence, thus

further exposing activists, whistle blowers and journalists to criminal prosecution (Right2Know Campaign, 2012c).

The fight is not over though. In mid-September 2013, several months after the Bill was passed by both house of Parliament and sent to President Zuma, he referred the Bill back to Parliament. Even though Zuma cited two specific clauses in the Bill as being “irrational and ... unconstitutional” he did not explain the specific reasons why these two clauses, neither of which address any of the major problems as outlined above, are problematic. While it remains to be seen whether any parliamentary time and space is opened up to address the various unconstitutional aspects of the Bill, the likelihood is that the Bill will be passed into law within months. It will then immediately face a Constitutional Court challenge by an increasingly combative civil society which is also looking to new technology and creative avenues such as open data to prise open the doors of information in South Africa (McKinley, 2012b).

Another piece of securocrat legislation that has only recently been signed into law by Zuma is the General Intelligence Laws Amendment Bill (otherwise known as the ‘Spy Bill’). It faced extensive public opposition and like the Secrecy Bill, the Matthews Commission Report has been largely ignored. While opposition engendered some positive changes to the initial Bill, it did not prevent Zuma and his securocrats from retaining the most worrisome provisions. Amongst these are: the centralisation of every intelligence structure, foreign and domestic (with the exception of the oversight body, the National Intelligence Coordinating Committee) into a ‘super’ State Security Agency (SSA) and an overly broad intelligence mandate that includes ‘political intelligence’, which could result in the monitoring of journalists, unionists, activists etc.

While a clause that would have made it legal for the new SSA to tap into the private communications of ordinary citizens without a warrant through the monitoring of ‘foreign signals’ which could include Skype, Gmail, Facebook etc. (McKinley 2012c; Right2Know Campaign 2012a; Bhardwaj, 2013) was scrapped, the matter is not closed since the SSA has indicated it will address this in a future policy review during 2014. Worryingly, there is enough evidence exposed in the media which suggests this kind of monitoring continues to happen, even though it is illegal. When combined with the Secrecy Bill the clear picture that is emerging is one of a ‘superpower’ state security and intelligence establishment answering largely to itself and its political masters. That sounds eerily familiar.

Quo Vadis?

South Africa's apartheid and more recent transitional past have a dual but inter-twined history: one of repression, injustice, inequality and secrecy; another, of freedom, justice, equality and openness. The battle between these two did not end in 1994; it simply changed faces and shifted gears. As South Africa approaches the 20 year mark we are at a crossroads on many fronts, but no more so than when it comes to the collusive and corrosive mix of secrecy and power. The longer it goes on, the more dominant it will become and the harder it will be to resist and defeat.

Those who are determined to force the toxic mix down our throats cannot be the ones entrusted to be the overseers and implementers of openness and transparency in a democracy. If the powerful are fearful of what ordinary people think, know and do then they are fearful of democracy itself. It is not, as they would have it, simply a matter of 'balancing' self-constructed notions of state/national security against the rights and freedoms of our democracy. Those rights and freedoms, which are not static but have been and remain continuously fought and struggled for, are the foundational basis for our collective intelligence and security both in the present and the future.

NOTES

¹ For more holistic and historical analyses of the varied relationships between secrecy and power (both in relation to South Africa and internationally) and, subsequent socio-political impacts see, Gill (1994), Leigh and Lustgarten (1994), Cawthra and Luckham (2003), Saunders (2006) and Fenster (2008)

² The project was called *Top Secret America* and consisted of a series of online articles. For figures quoted see Priest and Arkin (2010)

³ Although the historical development of apartheid always had as much to do with class considerations as those of race, the racism of the National Party and racial history of South Africa provided a firm foundation on which to construct apartheid. In this light the historical development of South Africa has been labelled 'racial capitalism'. For extended discussions on this see Legassick (1974).

⁴ For a critical analysis of the ANC and SACP's exiled politics and organisation, see Ellis and Sechaba (1992)

⁵ Acknowledgements to Henning Melber (2010) 'Beyond settler colonialism is not yet emancipation: On the limits to liberation in Southern Africa', Research Paper for the Nordic Africa Institute.

⁶ This was first announced (publicly) by then-Finance Minister Trevor Manuel and subsequently repeated (publicly) on more than one occasion by then-President Nelson Mandela

⁷ This included the expulsion of the author from the SACP in 2000. For a more extended (and polemical) discussion see McKinley (2000)

⁸ Then-Minister of Justice and Constitutional Development Penuell Maduna, foreshadowed the positive expectations that accompanied the legislation when he stated: 'We are turning on the light to bring to an end the secrecy and silence that characterised decades of apartheid rule and administration' [South Africa Press Association Press Release, 25 January 2000, Bill Will End Secrecy: Maduna].

⁹ Which included dozens of newspaper articles, numerous academic research reports and at least two books

¹⁰ For example see, Address of the President of South Africa, Thabo Mbeki, at the Intelligence Services Day 10th Anniversary Awards Ceremony and Inauguration of the Wall and Garden of Remembrance: Musanda, Tshwane: 24 November 2005, <http://www.dfa.gov.za/docs/speeches/2005/mbek1125.htm> (accessed 4 March 2013)

¹¹ All subsequent quotes are taken from the Commission Report. Also see: Jane Duncan (2011) and Right2Know Campaign (2013a)

¹²For a classic example of the Zuma faction's clearly self-interested public attempts to paint themselves as the saviours of South Africa's constitutional democracy, and Zuma as the victim of an elaborate conspiracy, see Maharaj (2009)

¹³ The Bill has been opposed by many other civil society organisations, sections of the media, opposition political parties as well as COSATU. Not surprisingly though, the SACP has once again chosen to line up behind their ANC masters.

REFERENCES

- Bhardwaj, V (2013) 'Briefing Note: developments on GILAB thus far'. Email correspondencetothe Right2Know working groups list, 11 March
- Brümmer, S and S Sole (2008) 'ANC's power grab'. *Mail and Guardian*, 1 February, http://www.mg.co.za/articlePage.aspx?articleid=331152&area=/insight/insight_national/ (accessed 19 April 2008)
- Bunting, B (1969) *The Rise of the South African Reich*. Harmondsworth: Penguin Books
- Carnie, T (2012) 'Secrecy over environment information'. *The Mercury*, April 16
- Cawthra G. and R. Luckham (Eds) (2003) *Governing Insecurity: Democratic Control of Military and Security Establishments in Transitional Societies*, London and New York: Zed Press
- Cwele, S (2011), Address by the Minister of State Security, Dr Siyabonga Cwele on the Occasion of the State Security Budget Vote, 02 June, http://www.ssa.gov.za/Portals/0/SSA%20docs/Speeches/2011/Minister_Budget%20Vote%202011%20Revised.pdf (accessed 7 August 2011)
- De Waal, M (2012) 'Unregulated and Taking Root: SA's Private Security Peril'. *Daily Maverick*, 19 November, <http://www.dailymaverick.co.za/article/2012-11-19-unregulated-and-taking-root-sas-private-security-peril#.UVV2xRc7FrM> (accessed 6 December 2012)
- Duncan, J (2010) 'The Return of State Repression', 31 May, <http://www.sacsis.org.za/site/article/489.1> (accessed 12 June 2010)
- Duncan, J (2011) 'How Deep Is the Rot in South Africa's Intelligence Services?', 23 October, <http://www.sacsis.org.za/site/article/771.1> (accessed 28 October 2011)
- Earthlife Africa Jhb (2012) 'Department of Energy's Strike Against Democracy'. Press Release, 16 February
- Ellis, S and T Sechaba (1992) *Comrades Against Apartheid: The ANC and the South African Communist Party in Exile*. London: James Currey
- Fenster M (2008) *Conspiracy Theories: Secrecy and Power in American Culture* (Revised Edition). Minneapolis: University of Minnesota Press

Freedom of Expression Institute (2010) 'FXI Challenges Justice Department's Decision to Deny Access to the State's Submissions to the Ginwala Inquiry'. Press Release, 8 December

Gill, P (1994) *Policing Politics: Security Intelligence and the Liberal Democratic State*. London: Frank Cass

Greenpeace Africa (2012) 'Greenpeace lodges complaint with Public Protector and the SA Human Rights Commission'. Press Release 19 November 2012, <http://www.greenpeace.org/africa/en/Press-Centre-Hub/Press-releases/Greenpeace-lodges-complaint-with-Public-Protector-and-the-SA-Human-Rights-Commission/> (accessed 2 December 2012)

Hefer Commission of Inquiry (2004), Report to President Thabo Mbeki, 7 January, <http://www.info.gov.za/view/DownloadFileAction?id=164664> (accessed 8 November 2012)

Independent Police Investigative Directorate (2010/2011) Annual Reports, http://www.ipid.gov.za/documents/annual_reports.asp (accessed 10 October 2012)

IOL News (2013) 'Bobby Motaung faces more charges', 3 March, <http://www.iol.co.za/news/crime-courts/bobby-motaung-faces-more-charges-1.1479773#.UVLzxc7FrM> (accessed 10 March 2013)

Jaynes, N (2012) Flying Below the Radar? The Armed Private Security Sector in South Africa. Open Society Foundation Occasional Paper, <http://osf.org.za/wp/wp-content/uploads/2012/10/CJI-Occasional-Paper-11.pdf> (accessed 24 January 2013)

Kasrils, R (2012) 'It was like poking a hornet's nest'. *Sunday Times*, 26 August

Legassick, M (1974) South Africa: Capital Accumulation and Violence. *Economy and Society* 3 (3): 253-291

Leigh, I and L Lustgarten (1994) *In from the Cold: National Security and Parliamentary Democracy*. Oxford: Clarendon Press

Loxton, L (2003) 'Mboweni wants to block access to banking information'. *Business Report*, 31 March

Maharaj, M (2009) 'Walking tall in the face of adversity is a collective effort'. *Sunday Times*, 12 April

Mail & Guardian (2009) 'Spooks Haunt our Democracy', 22 May, <http://mg.co.za/article/2009-05-22-spooks-haunt-our-democracy> (accessed 18 February 2012)

Mail & Guardian (2013a) 'Editorial, Khampepe report: Keeping you in the dark', 01 March <http://mg.co.za/article/2013-02-01-00-khampepe-report-keeping-you-in-the-dark>

Mail & Guardian (2013b) 'Lawyers: Zuma will fight release of Spy Tapes', 10 March, <http://mg.co.za/article/2013-03-10-president-zuma-to-fight-release-of-spy-tapes> (accessed 13 March 2013)

Marx, A (1992) *Lessons of Struggle: South African Internal Opposition, 1960-1990*. Cape Town: Oxford University Press

Mbeki, T (2002) Letter from the President: The Masses are Not Blind. *ANC Today*, 2 (40) 4-10 October

McKinley, D T (1997) *The ANC and the Liberation Struggle: A Critical Political Biography*. London: Pluto Press

McKinley, D T (2000) The end of 'innocence': the alliance and the left. *South Africa Labour Bulletin* 24 (5): 55-60

McKinley, D T (2001) Democracy, Power and Patronage: Debate and Opposition within the ANC and Tripartite Alliance since 1994. In R Southall (Ed) *Opposition and Democracy in South Africa*. London: Frank Cass Publishers: 183-206.

McKinley, D T (2003) The State of Access to Information in South Africa. Research Report for the Centre for the Study of Violence and Reconciliation

McKinley, D T and A Veriava (2005) *Arresting Dissent: State Repression and Post-Apartheid Social Movements*. Johannesburg: Centre for the Study of Violence and Reconciliation

McKinley, DT (2011) FIFA and the Sports-Accumulation Complex and, Mbombela: Corruption, Murder, False Promises and Resistance. In E Cottle (Ed) *South Africa's World Cup: A Legacy for Whom?* Scottsville: University of KwaZulu-Natal Press

McKinley DT (2012a) Beauty and the Beast: A historical timeline of corruption, greed and conflict in Badplaas, Mpumalanga (1998-2012). Unpublished research report undertaken on behalf of Fred Daniel

McKinley DT (2012b) The Right to Know, The Right to Live, Open Data in South Africa. Research Report for the Open Democracy Advice Centre

McKinley DT (2012c) 'Back to the Future? Securitising the South Africa State', 6 March, <http://www.sacsis.org.za/site/article/1228> (accessed 6 March 2012)

Media 24 Investigations (2013) 'Hawks probe construction industry price-fixing', 4 February, <http://www.m24i.co.za/2013/02/04/hawks-probe-construction-industry-price-fixing> (accessed 16 February 2013)

Ministerial Commission on Intelligence (2008) Intelligence in a Constitutional Democracy, 10 September, http://www.ssronline.org/edocs/review_commission_final_report20080910.doc (accessed 15 October 2011)

-
- Netshitenzhe, J (1996) State and Social Transformation. African National Congress Discussion Document, <http://www.anc.org.za/show.php?id=306> (accessed 16 July 2001)
- Parliamentary Monitoring Group (2006) 'Sport and Recreation and Provincial and Local Government Portfolio Committees - 2010 Agreements with Municipalities Briefing', 6 June, <http://www.pmg.org.za/node.7874> (accessed 13 July 2010)
- Phoshoko, F, T Timse and S Brümmer (2013) 'R1-billion in 'illegal' party payouts', *Mail and Guardian*, 8 Marh, <http://mg.co.za/article/2013-03-08-00-r1-billion-in-illegal-party-payouts> (accessed 15 March 2013)
- Priest, D and W Arkin (2010) 'A hidden world growing beyond control'. *Washington Post*, <http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/> (accessed 27 March 2011)
- Rasool, F (2012) 'E-tolling: It's all about the money'. ITWeb, 24 May
- Republic of South Africa (2004) *Protection of Constitutional Democracy Against Terrorist and Related Activities Act*, <http://www.info.gov.za/view/DownloadFileAction?id=67972> (accessed 12 June 2005)
- Right2Know Campaign (2012a) R2 Submission on the General Intelligence Laws Amendment Bill, 16 March, <http://www.r2k.org.za/2012/03/16/r2k-submission-on-the-general-intelligence-laws-amendment-bill/> (accessed 24 March 2012)
- Right2Know Campaign (2012b) How the National Key Points Act undermines the public's right to know, 4 October, <http://www.r2k.org.za/2012/10/04/how-the-national-key-points-act-undermines-the-publics-right-to-know/> (accessed 17 October 2012)
- Right2Know Campaign (2012c), Why the Secrecy Bill still fails the Freedom Test, 28 November, <http://www.r2k.org.za/2012/11/28/guide-why-secrecy-bill-fails/> (accessed 29 November 2012)
- Right2Know Campaign (2013a) The Matthews Commission, GILAB and why we're worried about SA's spies, 11 February, <http://www.r2k.org.za/2013/02/11/matthews-commission-gilab-south-africa-spies/> (accessed 15 February 2013)
- Right2Know Campaign (2013b) R2K's Secret State of the Nation Report, 17 February, <http://www.r2k.org.za/2013/02/17/secret-state-of-the-nation-report/> (accessed 18 February 2013)
- SA 2010 FIFA World Cup (2010) Government's Guarantees, <http://www.sa2010.gov.za/en/guarantees> (accessed 24 July 2010)
- Sanders, J (2006) *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*. London: John Murray
- Smith, N (2011) 'Aurora's 'plunder' of mines secret as liquidation hearing is held in camera'.

Business Day, 3 August

South Africa Press Association (2000) 'Bill Will End Secrecy: Maduna'. Press Release, 25 January

South Africa Press Association (2013) 'BHP Billiton Loses Court Bid', 17 March, <http://www.iol.co.za/business/companies/bhp-billiton-loses-court-bid-1.1487704#.UVR-WBc7FrM> (accessed 18 March 2013)

South African Police Service (2007), *National Key Points Act 102 of 1980* (updated to 31 August 2007), http://www.saps.gov.za/docs_publications/legislation/juta/a102of1980.pdf (accessed 3 November 2012)

South Durban Community Environmental Alliance (2012) Trucking, the Port Expansion, the Dug-out Port, Back of Port plan, and Link Road: How will these developments impact on communities, the environment, and contribute to climate change? http://www.sdcea.co.za/images/stories/pdfs/trucking_port_expansion_dugout_port_info.pdf (accessed 2 March 2013)

Suttner, R (2006) Talking to the ancestors: national heritage, the Freedom Charter and nation-building in South Africa in 2005. *Development Southern Africa* 23 (1): 3-27

Suttner, R (2008) *The ANC Underground in South Africa*. Auckland Park: Jacana Media

The Times (2012) 'Why won't the government come clean on e-tolling?' 27 November, <http://www.timeslive.co.za/opinion/editorials/2012/11/27/why-won-t-the-government-come-clean-on-e-tolling> (accessed 3 December 2012)

Turok, B (1974) South Africa: The Search for a Strategy. In R. Miliband and J. Saville (Eds) *Socialist Register 1973*, New York: Monthly Review Press

Vally, S (2003) The Political Economy of State Repression in South Africa. In S Ndung'u (Ed) *The Right to Dissent*. Johannesburg: Freedom of Expression Institute

'World Cup 2010: the legacy'. *Business Report*, 12 July 2010